



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable W. A. Davis
State Registrar
State Board of Health
Austin, Texas

Dear Sir:

Opinion No. O-2673

Re: Whether county judge
should certify his
disqualification to
the Governor to pass
upon the filing for
record of his own and
his brothers' and
sisters' birth record.

This will acknowledge receipt of your letter of
August 22, 1940, requesting the opinion of this department
upon the following matter:

"Judge H. C. McClure, County Judge of
Jack County, Texas, states that he and his
brothers and sisters were born in Jack
County; that at present he is County Judge
of that county and asks if, under the pro-
visions of House Bill 614, 46th Legislature,
1939, he, as Probate Judge, can pass on
his own birth certificate and that of his
brothers and sisters and order them filed.
Or, should he certify his disqualification
and ask the Governor to appoint a Special
Judge to act on these matters."

House Bill No. 614, Acts 1939, 46th Legislature,
p. 346, provides for the registration of births and deaths
not previously registered. The procedure to be followed is
that a record be submitted to the Probate Court in the fol-
lowing manner:

Honorable W. A. Davis, Page 2

"And provided further, that any citizen of the State of Texas wishing to file the record of any birth or death, not previously registered, may submit to the Probate Court in the county where the birth or death occurred, a record of that birth or death written on the adopted forms of birth and death certificates. The certificate shall be substantiated by the affidavit of the medical attendant present at the time of the birth, or in case of death, the affidavit of the physician last in attendance upon the deceased, or the undertaker who buried the body. When the affidavit of the medical attendant or undertaker cannot be secured, the certificate shall be supported by the affidavit of some person who was acquainted with the facts surrounding the birth or death, at the time the birth or death occurred, with a second affidavit of some person who is acquainted with the facts surrounding the birth or death, and who is not related to the individual by blood or marriage. The Probate Court shall require such other information or evidence as may be deemed necessary to establish the citizenship of the individual filing the certificate, and the truthfulness of the statements made in that record. The Clerk of the said Court shall forward the certificate to the State Bureau of Vital statistics with an order from the Court to the State Registrar that the record be, or be not, accepted. The State Registrar is authorized to accept the certificate when verified in the above manner, and shall issue certified copies of such records as provided for in Section 21 of this Act. Such certified copies shall be prima Facie evidence in all Courts and places of the facts stated thereon. The State Bureau of Vital Statistics shall furnish the forms upon which such records are filed, and no other form shall be used for that purpose."

Note that the Probate Court is required to pass upon the facts surrounding the birth or death and may require additional evidence if necessary.

Honorable W. A. Davis, Page 3

Article 15, Revised Civil Statutes, 1925, reads as follows:

"No judge or justice of the peace shall sit in any case wherein he may be interested or where either of the parties may be connected with him by affinity or consanguinity within the third degree, or where he shall have been counsel in the case."

It is clear that under Article 15 of the Revised Civil Statutes, and Section 11 of Article V of the Constitution from which Article 15 springs, the County Judge of Jack County is not only related to those who wish to prove the records of their birth; he is also interested in the registration of his own birth certificate. Undoubtedly he is disqualified to preside over these probate proceedings.

Article 1932, Vernon's Annotated Civil Statutes, as amended, was enacted to take care of just such situations. It reads as follows:

"When a county judge is disqualified to act in any probate matter, he shall forthwith certify his disqualification therein to the Governor, whereupon the Governor shall appoint some person to act as special judge in said case, who shall act from term to term until such disqualification ceases to exist. A special judge so appointed shall receive the same compensation as is now or may hereafter be provided by law for regular judges in similar cases, and the Commissioners' Court shall, at beginning of each fiscal year, include in the budget of the county, a sufficient sum for the payment of the special judge or judges appointed by the Governor to act for the regular county judge. As amended Acts 1939, 46th Leg., p. 187, § 1."

Consequently, it is the opinion of this department and you are respectfully advised that the County Judge of

Honorable W. A. Davis, Page 4

Jack County who desires to cause to be filed for record the birth certificate of himself, his brothers and sisters, as provided for in House Bill No. 614, Acts 1939, 46th Legislature, should, as provided in Article 1932, supra, certify his disqualification to the Governor whose duty it will be to appoint some suitable person to serve as county judge in his place.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

James D. Smullen
James D. Smullen
Assistant

JDS:RS

APPROVED SEP 4, 1940

Gerald B. Mann
ATTORNEY GENERAL OF TEXAS

